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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,002	09/18/2003	Gary D. Giegerich	9249-56U1	5833

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EXAMINER	
SAADAT, CAMERON	
ART UNIT	PAPER NUMBER
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/665,002	GIEGERICH ET AL.	
	Examiner	Art Unit	
	Cameron Saadat	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-10 and 12-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 4-10, and 12-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In response to remarks filed 1/23/2007, claims 1, 4-10, and 12-16 are pending in this application. Claims 2, 3, and 11 are cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 4-6, 8, 10, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beall et al. (USPN 4,974,857; hereinafter Beall) in view of Lichodziejewski et al. (USPN 6,283,872; hereinafter Lichodziejewski).

Regarding claim 1, Beall discloses an electronically-scored game comprising: an electronic controller 22; at least one sensor 25 operatively connected with the controller, the sensor adapted to detect at least one activity associated with the game and to generate a signal; a memory storing information corresponding to a plurality of audible recordings, the memory 39 being operatively connected with the controller 22 (Col. 6, lines 50-54); a sound generator 38 operatively connected with the controller; and a speaker 32 operatively connected with the sound generator 38, whereby upon detection of an activity associated with the game, the signal from the sensor activates the controller to cause at least one of the plurality of audible recordings to be

selected and played by the sound generator through the speaker. See Col. 4, lines 34-45; Fig. 4. Beall further discloses audible recordings that are based at least in part upon the quality of the at least one activity associated with the game. See Col. 6, lines 58-61. Beall discloses all of the claimed subject matter with the exception of explicitly disclosing that the audible recordings selected is of a derisive character when the quality of the at least one activity associated with the game is unfavorable. However, Lichodziejewski teaches an electronic bowling game, wherein audible recordings are played based on player performance, and wherein the audible recording is of a derisive character that taunts the player when the quality of the player's game performance is unfavorable. See Col. 6, line 62 – Col. 7, line 25; Col. 8, line 55-60. Thus, in view of Lichodziejewski, it would have been obvious to one of ordinary skill in the art to modify the audible recordings described in Beall, by providing audible recordings of a derisive character that taunts the player when the quality of the player's game performance is unfavorable, in order to attract and maintain attention of the game player. See Lichodziejewski Col. 5, lines 33-37.

Regarding claim 4, Beall discloses an electronically-scored game, wherein the at least one of the plurality of audible recordings selected is of a laudatory character when the quality of the at least one activity associated with the game is favorable. See Col. 7, line 64 – Col. 8, line 4.

Regarding claim 5 and 12, Beall discloses a system an method for playing an electronically scored dart game comprising: a dart board 11; at least one dart (Col. 2, lines 65-68); an electronic controller 22; at least one sensor 25 operatively connected with the controller, the at least one sensor adapted to detect a position of impact of the dart on the dart board and to generate a signal corresponding to the position of impact (Col. 4, lines 34-45; Fig. 4); a memory 39 storing a plurality of audible recordings, the memory 39 being operatively connected with the controller 22 (Col. 6, lines 50-54); a sound generator 38 operatively connected with the controller 22; and a speaker 32 operatively connected with the sound generator, whereby upon occurrence of a triggering event, the controller selects at least one of the plurality of audible recordings from

the memory and activates the sound generator to play the at least one of the plurality of audible recordings through the speaker. See Col. 4, lines 34-45. Beall further discloses audible recordings that are based at least in part upon the quality of the at least one activity associated with the game. See Col. 6, lines 58-61. Beall discloses all of the claimed subject matter with the exception of explicitly disclosing that the audible recordings selected is of a derisive character when the quality of the at least one activity associated with the game is unfavorable. However, Lichodziejewski teaches an electronic bowling game, wherein audible recordings are played based on player performance, and wherein the audible recording is of a derisive character that taunts the player when the quality of the player's game performance is unfavorable. See Col. 6, line 62 – Col. 7, line 25; Col. 8, line 55-60. Thus, in view of Lichodziejewski, it would have been obvious to one of ordinary skill in the art to modify the audible recordings described in Beall, by providing audible recordings of a derisive character that taunts the player when the quality of the player's game performance is unfavorable, in order to attract and maintain attention of the game player. See Lichodziejewski Col. 5, lines 33-37.

Regarding claims 6 and 13, Beall discloses an electronically scored dart game further comprising: a game memory 27 adapted to store a player's cumulative score through multiple rounds of a game of darts; game control switches adapted to allow cumulative scores of multiple players to be stored in the game memory through multiple rounds of the game of darts (Col. 4, lines 25-30; Col. 6, lines 18-21); and an additional game control switch adapted to allow the players to indicate to the game memory that a thrown dart missed the board (Col. 3, lines 27-33), wherein the triggering event is at least one of impact of the dart upon the dart board. See Col. 4, lines 34-45.

Regarding claims 8 and 15, Beall discloses an electronically scored dart game, wherein selection of the at least one of the plurality of audible recordings is based at least in part upon position of impact of the dart upon the dart board. See Col. 4, lines 34-45.

Regarding claim 10, Beall discloses an electronically scored dart game, wherein the at least one of the plurality of audible recordings selected is of a laudatory character when the triggering event reflects a desirable quality of play. See Col. 7, line 64 – Col. 8, line 4.

Regarding claim 14. Beall discloses a method, wherein the triggering event is impact of the dart upon the dartboard. See Col. 4, lines 34-45.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beall in view of Lichodziejewski, further in view of Yancey, Jr. (USPN 5,642,886).

Regarding claim 9, the combination of Beall and Lichodziejewski discloses all of the claimed subject matter with the exception of explicitly disclosing the feature of providing a game level difficulty input switch. However, Yancey Jr. teaches an electronic dartboard wherein a user may select a difficulty level (Col. 6, line 66 – Col. 7, line 3). Thus, in view of Yancey Jr. it would have obvious to one of ordinary skill in the art to modify the audible game setup mode described in Beall, by allowing a user to select a game difficulty level, in order to adjust the level of play according to a user's skill level.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beall et al. in view of Lichodziejewski, further in view of Miguel et al. (USPN 5,971,397; hereinafter Miguel).

Regarding claims 7 and 16, the combination of Beall and Lichodziejewski discloses all of the claimed subject matter with the exception of explicitly disclosing an on/off switch to enable and disenable playing of the at least one of the plurality of audible recordings. However, Miguel teaches an audible electronic dartboard comprising volume control (See Miguel, Col. 14, lines 33-52). In view of Miguel, it would have been obvious to one of ordinary skill in the art to modify the audio control described in Miguel, by providing volume control, in order to enable, disable, or adjust volume to a user's desired level.

Response to Arguments

Applicant's arguments filed 1/23/2007 have been fully considered but they are not persuasive. Applicant emphasizes that one of ordinary skill in the art would not be motivated to combine the electronic dart game described in Beall with the feature of heckling described in Lichodziejewski, because Beall is directed to sight-impaired users. However, the examiner disagrees for the following reasons. The invention of Beall is not solely directed to sight-impaired users, as purported by applicant. Instead Beall discloses that "... it is the general aim of the present invention to provide an electronic dart game which can be played by blind persons, sight-impaired persons **or** others who chose to play the game using stimuli, at least in part, which are other than visual." See Beall, Col. 3, lines 7-11. Thus, although sight-impaired people are capable of using the electronic dart game described in Beall, the device is in no way limited to sight-impaired users. Instead, Beall specifically teaches that the general aim of the present invention to provide an electronic dart game which can be played by sight-impaired persons or others who chose to play the game using stimuli, at least in part, which are other than visual.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Beall discloses all of the claimed subject matter with the exception of explicitly disclosing that the audible recordings selected is of a derisive character when the quality of the at least one activity associated with the game is unfavorable. However, Lichodziejewski teaches an electronic bowling game, wherein audible recordings are played based on player performance, and wherein the audible recording is of a derisive character that taunts the player when the quality of the player's game performance is unfavorable. See Col. 6, line 62 – Col. 7, line 25; Col. 8, line

55-60. Thus, in view of Lichodziejewski, it would have been obvious to one of ordinary skill in the art to modify the audible recordings described in Beall, by providing audible recordings of a derisive character that taunts the player when the quality of the player's game performance is unfavorable, in order to attract and maintain attention of the game player. See Lichodziejewski Col. 5, lines 33-37.

The examiner agrees that one of ordinary skill in the art may or may not have a moral issue with heckling a sight-impaired game player. However, applicant has not considered what the prior art, taken as a whole, would suggest to an artisan, at the time of the invention. Instead, applicant's argument relies on the inaccurate emphasis that the dart game described in Beall is solely directed to sight-impaired users. To the contrary, Beall specifically discloses that the general aim of the present invention to provide an electronic dart game which can be played by sight-impaired persons or others who chose to play the game using stimuli, at least in part, which are other than visual. See Col. 2, lines 7-11. Thus, the dart game described in Beall is also directed to non-disabled persons who enjoy audio stimuli during game play.

It is noted that the standard of patentability is what the prior art, taken as a whole, suggests to an artisan at the time of the invention. *In re Merck & Co., Inc., 800 F.2d 1091,1097, 231 USPQ 375, 379 (Fed. Cir. 1986).* The question is not only what the references expressly teach, but what they would collectively suggest to one of ordinary skill in the art. *In re Simon, 461 F.2d 1387, 1390, 174 USPQ 114, 116 (CCPA 1972).* In this case, it would have been obvious to an artisan to modify the audio described in Beall's electronic dart game, by providing audible recordings of a derisive character that taunts the player when the quality of the player's game performance is unfavorable, in order to attract and maintain attention of the game player. See Lichodziejewski Col. 5, lines 33-37.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cameron Saadat
February 26, 2007

Robert E Pezzuto
Supervisory Patent Examiner
Art Unit 3714